



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 27, 1996

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR96-0256

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36237.

The Austin Independent School District ("AISD") received an open records request for "information leading to allegations of misconduct concerning the finance and attendance procedures" at one of the school district's high schools. You ask whether the information requested may be excepted from required public disclosure pursuant to the informer's privilege as incorporated into section 552.101 of the Government Code. You also ask whether the information requested may be excepted from required public disclosure under section 552.022(1) of the Government Code because you claim that a Texas Education Agency ("TEA") investigation of these allegations is on-going.¹ You have submitted the information you claim may be excepted from required public disclosure for our review.

You contend that the informer's privilege as incorporated into section 552.101 may except the names of the persons filing complaints with the school district. The informer's privilege protects the identity of persons who report violations of the law to

¹You originally sought to withhold the requested information under section 552.108 of the Government Code. However, you have since withdrawn that exception.

officials having the duty of enforcing particular laws. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege does not, however, apply to information that does not describe illegal conduct. Open Records Decision No. 515 (1988) at 5. For example, the informer's privilege aspect of section 552.101 does not protect memoranda and written statements complaining of a fellow employee's work performance when those statements do not reveal the violation of specific laws to the officials charged with enforcing those laws. *See* Open Records Decision Nos. 579 (1990) at 8; 515 (1988) at 3. In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviario*, 353 U.S. at 60.

We have examined the documents for which you claim the informer's privilege. The documents tend to reflect grievances, not reported crimes. The statements taken were from employees responding to questions presented to them in their scope of employment. *See* Open Records Decision No. 579 (1990) at 8. In reviewing the documents submitted, it appears that, with one exception, the complainants considered themselves to be commenting on the administrative performance of an individual and situations at the school rather than reporting criminal or illegal behavior.² *Id.* Accordingly, we conclude that, with the one noted exception (see footnote 2), the requested information is not excepted from disclosure by the informer's privilege component of section 552.101.

You also contend that you may withhold the requested information pursuant to section 552.022(1) since a TEA investigation is ongoing. All information held by a governmental body is open unless it is excepted from disclosure by one of the specific exceptions provided in chapter 552 of the Government Code. Open Records Decision No. 565 (1990). Therefore, if information does not fall within a particular exception, it must be disclosed. Open Records Decision No. 470 (1987). Section 552.022 is not an exception pursuant to which a governmental body may withhold information. Consequently, you may not withhold the information requested pursuant to section 552.022(1).³

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

²One document contains information which tends to identify an individual who believed that she was reporting a possible violation of a crime. We have marked this document to indicate which information may be withheld under the informer's privilege and section 552.101.

³We note that in at least one instance, the requested information reveals the home address of a government employee. If this employee has made the election under section 552.024 that this information be kept confidential, AISD must withhold that information under section 552.117 of the Government Code.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/ch

Ref: ID# 36237

Enclosures: Marked documents

cc: Mr. Eddie L. Orum, III
6301 Thirlmare Ct.
Austin, Texas 78754
(w/o enclosures)